

ESTATE OF DAVID JAY COURCHENE, JR.

IBIA 88-15

Decided September 1, 1988

Appeal from an order modifying determination of heirs issued by Administrative Law Judge Vernon J. Rausch in Indian probate IP TC 592R 86, IP TC 592R 86-1.

Affirmed.

1. Indian Probate: Appeal: Generally

The appellant bears the burden of proving the error of the decision from which the appeal is taken.

APPEARANCES: Kevin R. Courchene, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

On February 1, 1988, the Board of Indian Appeals (Board) received a notice of appeal from Kevin R. Courchene (appellant). Appellant sought review of a January 19, 1988, order modifying a determination of heirs issued by Administrative Law Judge Vernon J. Rausch in the estate of appellant's brother, David Jay Courchene, Jr. (decedent). For the reasons discussed below, the Board affirms that order.

Background

Decedent, Fort Peck Unallottee U04918, was born on September 20, 1940, and died intestate on May 13, 1985. A hearing to probate his trust or restricted estate was held by Judge Rausch on October 21, 1986. Evidence presented at that hearing suggested that decedent had been married seven times, had no natural children, but had adopted a child, Dajette Courchene, with his first wife. Divorce certificates from decedent's first and fourth wives were made part of the record of the hearing.

By order dated December 12, 1986, Judge Rausch found that there was no evidence of record that decedent was married at the time of his death. Accordingly, he determined that decedent's sole heir was his adopted daughter, Dajette. Judge Rausch further found that all of decedent's trust or restricted property was subject to escheat to the Assiniboine and Sioux Tribes of the Fort Peck Reservation under the Indian Land Consolidation Act, 25 U.S.C. § 2206, as amended (Supp. II 1984). ^{1/}

^{1/} When Judge Rausch's decision was issued, the Supreme Court was reviewing Irving v. Clark, 758 F.2d 1260 (8th Cir. 1985). In Irving the Eighth Circuit Court of Appeals held that section 2206, both in its original form and

By letter dated December 22, 1986, Winifred L. Courchene sought reopening of the estate, alleging that she and decedent were legally married at the time of his death. She enclosed copies of a Certificate of Marriage, showing that she and decedent were married in Lethbridge, Alberta, Canada, on June 5, 1984, and of decedent's death certificate showing that he was married. Winifred stated she had sent these documents to the Bureau of Indian Affairs and did not know why they had not been presented at the hearing.

By order dated April 24, 1987, Judge Rausch issued a notice to show cause why decedent's estate should not be reopened and Winifred found to be entitled to a 1/2 interest in his trust or restricted property as his surviving spouse. This notice was sent to all interested parties.

Present appellant objected to a finding that Winifred was decedent's surviving spouse. He alleged that decedent was not legally divorced from Jessica Jessepe Courchene (Rutherford), his sixth wife, and therefore, could not be legally married to Winifred. Appellant also argued that the Canadian marriage was invalid, the Canadian marriage certificate contained no indicia of authenticity, the word "Married" on decedent's death certificate was in a different type than the rest of the certificate, and "N/A" appeared in the box on the death certificate for name of surviving spouse.

By order dated July 31, 1987, Judge Rausch ordered the estate reopened. Before the second hearing was held, Judge Rausch received a report of dissolution of marriage for decedent and Jessica from the Blackfeet Tribal Court. The report showed that they were divorced March 9, 1984.

The second hearing was held on August 26, 1987. Appellant did not appear at the hearing. None of the parties that did appear wished to make

fn. 1 (continued)

as amended, was unconstitutional. Accordingly, Judge Rausch's order provided:

"Until it is determined whether the decision of the 8th Circuit Court of Appeals is affirmed or reversed, no distribution of the decedent's interests listed on Exhibit A [inventory of decedent's trust or restricted property prepared by the Bureau of Indian Affairs] will be made by this Order. At some future date, either the Administrative Law Judge or the Land Titles and Records Office, Bureau of Indian Affairs, will make distribution of these additional land interests and will designate whether they shall pass to the decedent's heirs as determined herein, or to the designated Tribe, pursuant to said Act."

(Emphasis in original.)

Irving has since been decided by the Supreme Court. Hodel v. Irving, 481 U.S. 704, 107 S. Ct. 2076 (1987). Although the original version of section 2206 was held unconstitutional, because the Court did not specifically consider the constitutionality of the amended version of the section, the status of the amended version was left in doubt. A case specifically challenging the constitutionality of the amended version of section 2206 has recently been filed. Curley v. Hodel, CIV 88-0886JC (D.N.M. filed July 28, 1988).

a statement for the record. Judge Rausch informed them on the record that he had no authority to look behind the divorce decree from the Blackfeet Tribal Court or the Canadian marriage certificate. However, upon representations to the Judge that certain family members wished to pursue the matter further, he agreed to leave the record open for an additional 30 days.

When no additional information was furnished, Judge Rausch entered an order on January 19, 1988, altering his initial determination of heirs in order to include Winifred as decedent's surviving spouse, to share the estate equally with Dajette.

The Board received appellant's notice of appeal from this order on February 1, 1988. The notice of appeal stated that Winifred was not decedent's surviving spouse because he was never legally divorced from Vermae Johnson Courchene, his fifth wife. After receiving the probate record in this estate, the Board issued a notice of docketing on June 20, 1988, setting forth the parties' briefing privileges. No briefs were filed in the appeal.

Discussion and Conclusions

[1] Assuming arguendo that appellant has standing to bring this appeal, he bears the burden of showing the error in the decision from which he is appealing. Estate of George Neconie, 16 IBIA 120 (1988), and cases cited therein. Because he submitted nothing else, appellant must sustain this burden of proof through his notice of appeal.

In his notice of appeal, appellant merely redirects his argument to decedent's fifth spouse, alleging a failure of divorce from Vermae as he had earlier alleged a failure of divorce from decedent's sixth spouse, Jessica. Appellant presents no evidence whatsoever to support his claim that decedent and Vermae were not divorced. Vermae herself, who was served throughout this proceeding by both Judge Rausch and the Board, has made no claim that she and decedent were not divorced. Appellant has not sustained his burden of proving that Judge Rausch's order was in error.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the January 19, 1988, decision of Judge Rausch is affirmed. Distribution of this estate remains subject to the provision in Judge Rausch's December 12, 1986, order that either he or the Bureau of Indian Affairs Land Titles and Records Office will make distribution of the interests affected by the escheat provisions of the Indian Land Consolidation Act.

Kathryn A. Lynn
Chief Administrative Judge

I concur:

Anita Vogt
Administrative Judge